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L.A. GEM & JEWELRY DESIGN, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

L.A. GEM & JEWELRY DESIGN, INC., a California Corporation, Plaintiff, vs. ASHLEY JEWELS, an Unknown Business Entity; BOARDWALK BUY, an Unknown Business Entity; and DOES 1-10; Defendants.	Case No.: 2:17-cv-2417 **COMPLAINT FOR:** **1. COPYRIGHT INFRINGEMENT;** **2. CONTRIBUTORY AND/OR VICARIOUS COPYRIGHT INFRINGEMENT** **JURY TRIAL DEMANDED**

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Plaintiff L.A. Gem & Jewelry Design, Inc. ("LA Gem") by and through its undersigned attorney, sues Defendants Ashley Jewels, Boardwalk Buy, and Does 1-10 and alleges:

JURISDICTION AND VENUE

1. This action arises under the laws of the United States and the Copyright Act of 1976 (17 U.S.C. § 101, *et seq.*), and as such, the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

2. The Court has personal jurisdiction because Defendants engaged in substantial, continuous, and systematic activities within the state, including:

(a) operating fully interactive retail ecommerce websites that solicit and engage in regular business in California and this District;

(b) advertising nationwide, including targeting California and this District; and

(c) engaging in contractual relations with California companies like Facebook, Inc., Twitter, Inc., Instagram, Inc., and Pinterest, Inc. to market, sell, and distribute products nationwide, including substantially to California and this District.

3. The Court also has personal jurisdiction because Defendants engaged in multiple intentional acts of copyright infringement expressly aimed at California which have caused harm to LA Gem. Such acts include but are not limited to:

(a) marketing, selling, and delivering a substantial amount of the infringing products in the state of California and this District;

(b) targeting California and this District with advertisements of the infringing products; and

(c) engaging in contractual relations with California companies like Facebook, Inc. to market, sell, and distribute the infringing products nationwide, including in the state of California and this District.

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4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b), (c), and 1400(a) because Defendants conduct business in this District by advertising in and shipping goods to this District, and a substantial part of the events or omissions giving rise to the claim occurred in this District. Upon information and belief, Defendants engaged in substantial, continuous, and systematic activities within this District. Upon information and belief, Defendants engaged in multiple intentional acts of copyright infringement expressly aimed at this District which have caused harm to LA Gem. Upon information and belief, Defendants also knew or were willfully blind to the fact that LA Gem owned a valid copyright in the subject designs, and that LA Gem would suffer lost sales and harm in this jurisdiction as a result of Defendants' infringing activities.

THE PARTIES

5. Plaintiff LA Gem is a California corporation having a place of business at 659 S. Broadway, Los Angeles, California 90014. LA Gem's place of business is conspicuously identified in its public filings with both the California Secretary of State and Copyright Office Public Catalog. LA Gem also provides services and goods under its LA Rocks service mark and trademark.

6. Upon information and belief, Defendant Ashley Jewels is an unknown business entity with its principal place of business located at 3200 N. America Dr., Buffalo, NY 14224, and Ashley Jewels does business in and with the State of California and, in particular, within this District. Specifically, at all relevant times Defendant Ashley Jewels has:

(a) Operated a fully interactive retail ecommerce website at www.ashleyjewels.com that solicits and engages in regular business in California and this District, including marketing, selling, and delivering a substantial amount of the infringing jewelry;

(b) Advertised its goods nationwide, including advertising the infringing jewelry;

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(c) Specifically targeted consumers in California and this District with sales of unauthorized Los Angeles Dodgers baseball jewelry;

(d) Used targeted advertising services to advertise the infringing jewelry specifically to consumers in California and this District;

(e) Engaged in contractual relations with California-based Facebook, Inc. to operate an online storefront, where Ashley Jewels markets and sells nationwide a substantial amount of the infringing jewelry; and

(f) Engaged in contractual relations with California companies like Facebook, Inc., Instagram, Inc. and Pinterest, Inc. to market, sell, and distribute products (including at the infringing jewelry) nationwide, including in the state of California and this District, *and* agreed under such contractual relations to resolve legal disputes in the state of California.

7. Upon information and belief, Defendant Boardwalk Buy is an unknown business entity with its principal place of business located at 2740 Sough Street, Toronto, Ontario L4T1G3, Canada, and an operating location at 3200 N. America Dr., Buffalo, NY 14224, and Boardwalk Buy does business in and with the State of California and, in particular, within this District. Specifically, at all relevant times Defendant Boardwalk Buy has:

(a) Operated a fully interactive retail ecommerce website at www.boardwalkbuy.com that solicits and engages in regular business in California and this District, including marketing, selling, and delivering a substantial amount of the infringing jewelry;

(b) Advertised its goods nationwide, including advertising the infringing jewelry;

(c) Conducted regular business in California and this District, including proclaiming on its website that it sells products made "in a sweatshop-free environment in downtown Los Angeles";

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(d) Engaged in contractual relations with California-based Facebook, Inc. to operate an online storefront, where Boardwalk Buy markets and sells nationwide a substantial amount of the infringing jewelry; and

(e) Engaged in contractual relations with California companies like Facebook, Inc., Instagram, Inc., Paypal, Inc., and Twitter, Inc. to market, sell, and distribute products (including at the infringing jewelry) nationwide, including in the state of California and this District, *and* agreed under such contractual relations to resolve legal disputes in the state of California.

8. Upon information and belief, Defendants Ashley Jewelry and Boardwalk Buy are alter egos. Defendants operate out of the same Buffalo, NY location. Additionally, when counsel for LA Gem ordered a piece of the infringing jewelry on Boardwalk Buy's website, Ashley Jewels fulfilled the order. A review of the publicly available source code for the webpages in which Boardwalk Buy sells the infringing jewelry also repeatedly identify the products as "Brand: Ashley Jewels."

9. Defendants Does 1 through 10, inclusive, are other parties not yet identified who have infringed LA Gem's copyrights, have contributed to the infringement of LA Gem's copyrights, or have engaged in one or more of the wrongful acts alleged herein. The true names, whether corporate, individual, or otherwise of Does 1 through 10, inclusive, are presently unknown to LA Gem, and therefore, are being sued by such fictitious names, and LA Gem will seek leave to amend this Complaint to include their true names and capacities when the same have been ascertained.

10. LA Gem is informed and believes, and on that basis alleges, that at all times relevant to this action, each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment, and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged herein with full knowledge of each and every

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violation of LA Gem's rights and the damages to LA Gem proximately caused thereby.

FACTS COMMON TO ALL COUNTS

11. LA Gem is a designer and creator of jewelry whose jewelry pieces are sold by numerous national retailers.

12. LA Gem is the designer and creator of the original artwork (as hereinafter described), all prior to Defendants' conduct complained of herein.

13. Upon information and belief, Defendants Ashley Jewels and Boardwalk Buy are retailers, manufacturers, and/or distributors of jewelry to the jewelry industry, and are in the business of manufacturing, marketing, and selling jewelry products that are available for purchase and use across the United States, including in this District.

COMMON ALLEGATIONS RELATED TO CRESCENT PENDANT

14. In 2013, LA Gem created its original design entitled LA Rocks I Love You to the Moon and Back: 451851BT, et al., including its Design No. 452037 (the "Crescent Pendant"), as pictured below:

I
love you
to the
moon and
back

15. Thereafter, LA Gem sought to register the copyright in the Crescent Pendant with the United States Copyright Office, and was granted such registration on December 12, 2013, under Registration No. VA 1-916-408.

16. At all relevant times, LA Gem complied in all respects with the Copyright Act, 17 U.S.C. § 101, *et seq*., and secured the exclusive rights and privileges in and to the Crescent Pendant. The Crescent Pendant is an original work copyrightable under the Copyright Act, and has been registered in full compliance with the Copyright Act.

17. Since the creation of the Crescent Pendant, LA Gem has been and still is the

sole proprietor of all rights, title, and interest in and to the copyright therein and Certificates of Registration corresponding therewith.

18. Since its creation, the Crescent Pendant has been manufactured and/or distributed by LA Gem or under its authority.

19. LA Gem has not authorized Defendants to copy, reproduce, manufacture, duplicate, disseminate, or distribute the Crescent Pendant or any jewelry products substantially similar thereto.

20. Upon information and belief, Defendant Ashley Jewels has engaged in the marketing, manufacture, distribution, duplication, and/or sale of infringing copies of the Crescent Pendant.

21. Upon information and belief, Defendant Ashley Jewels has sold unauthorized and infringing copies of at least the Crescent Pendant, which bear a design that is substantially similar – if not strikingly similar – to the authentic Crescent Pendant at retail, at wholesale, and through retailers, including ashleyjewels.com. The infringement is so brazen that it copies LA Gem's Designer's cursive handwriting. All of the foregoing acts occurred without LA Gem's consent.

22. Upon information and belief, Defendant Ashley Jewels has sold the unauthorized infringing copies of the Crescent Pendant to the public, including customers in this district, at retail, at wholesale, and through retailers, including ashleyjewels.com.

COMMON ALLEGATIONS RELATED TO
MOM PENDANT NOS. 1 AND 2

23. In 2013, LA Gem created its original design entitled LA Rocks I Love You to the Moon and Back: 451711CL, et al., including its Design No. 451713 ("Mom Pendant No. 1"), as pictured below:

You
To
the
moon
and
Back
Mom

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24. Thereafter, LA Gem sought to register the copyright in Mom Pendant No. 1 with the United States Copyright Office, and was granted such registration on November 25, 2013, under Registration No. VA 1-889-369.

25. At all relevant times, LA Gem complied in all respects with the Copyright Act, 17 U.S.C. § 101, *et seq*., and secured the exclusive rights and privileges in and to Mom Pendant No. 1. Mom Pendant No. 1 is an original work copyrightable under the Copyright Act, and has been registered in full compliance with the Copyright Act.

26. In 2014, LA Gem created its original design entitled LA Rocks I Love You to the Moon and Back: 453547 ("Mom Pendant No. 2"), which is a derivative work of Mom Pendant No. 1, as pictured below:

I Love You To the moon and back
Mom

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27. Since the creation of Mom Pendant Nos. 1 and 2 (collectively, "Mom Pendants"), LA Gem has been and still is the sole proprietor of all rights, title and interest in and to the copyrights therein.

28. Since their creation, the Mom Pendants have been manufactured and/or distributed by LA Gem or under its authority.

29. LA Gem has not authorized Defendants to copy, reproduce, manufacture, duplicate, disseminate, or distribute the Mom Pendants or any jewelry products substantially similar thereto.

30. Upon information and belief, Defendants have engaged in the marketing, manufacture, distribution, duplication, and/or sale of infringing copies of the Mom Pendants.

31. Upon information and belief, Defendants Ashley Jewels and Boardwalk Buy

have sold unauthorized and infringing copies of at least the Mom Pendants, which bear a design that is substantially similar – if not strikingly similar– to the authentic Mom Pendants at retail, at wholesale, and through retailers, including ashleyjewels.com and boardwalkbuy.com. The infringement is so brazen that it copies LA Gem's Designer's cursive handwriting. All of the foregoing acts occurred without LA Gem's consent.

32. Upon information and belief, Defendants Ashley Jewels and Boardwalk Buy have sold the unauthorized infringing copies of the Mom Pendants to the public, including customers in this district, at retail, at wholesale, and through retailers, including ashleyjewels.com and boardwalkbuy.com.

COMMON ALLEGATIONS RELATED TO

HEART PENDANT

33. In 2011, LA Gem created its original design entitled LA Rocks Footnotes: 442638 ("Heart Pendant"), as pictured below:

Mother and Daughter forever

34. Thereafter, LA Gem sought to register the copyright in the Heart Pendant with the United States Copyright Office, and was granted such registration on January 27, 2015, under Registration No. VA 1-949-421.

35. At all relevant times, LA Gem complied in all respects with the Copyright Act, 17 U.S.C. § 101, *et seq*., and secured the exclusive rights and privileges in and to the Heart Pendant. The Heart Pendant is an original work copyrightable under the Copyright Act, and has been registered in full compliance with the Copyright Act.

36. Since the creation of the Heart Pendant, LA Gem has been and still is the sole proprietor of all rights, title, and interest in and to the copyright therein and Certificates of Registration corresponding therewith.

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37. Since its creation, the Heart Pendant has been manufactured and/or distributed by LA Gem or under its authority.

38. LA Gem has not authorized Defendants to copy, reproduce, manufacture, duplicate, disseminate, or distribute the Heart Pendant or any jewelry products substantially similar thereto.

39. Upon information and belief, Defendants Ashley Jewels and Boardwalk Buy have engaged in the marketing, manufacture, distribution, duplication, and/or sale of infringing copies of the Heart Pendant.

40. Upon information and belief, Defendants Ashley Jewels and Boardwalk Buy have sold unauthorized and infringing copies of at least the Heart Pendant, which bear a design that is substantially similar – if not strikingly similar – to the authentic Heart Pendant at retail, at wholesale, and through retailers, including ashleyjewels.com and boardwalkbuy.com. The infringement is so brazen that it copies LA Gem's Designer's cursive handwriting. All of the foregoing acts occurred without LA Gem's consent.

41. Upon information and belief, Defendants Ashley Jewels and Boardwalk Buy have sold the unauthorized infringing copies of the Heart Pendant to the public, including customers in this district, at retail, at wholesale, and through retailers, including ashleyjewels.com and boardwalkbuy.com.

42. For the Court's convenience, the following table sets forth Plaintiff's designs at issue (collectively "Subject Designs") and the currently known infringers' identities and infringing products:

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L.A. Gem Copyrighted Design	Infringing Defendants' Products
Crescent Pendant Registration No.: VA 1-916-408 I love you to the moon and back	• Ashley Jewels I love you to the moon and back I love you to the moon and back
Mom No. 1 Registration No.: VA 1-889-369 I love you to the moon and back Mom Mom No. 2 I love you to the moon and back Mom	• Ashley Jewels • Boardwalk Buy Mom I love You To the moon back and aunt I Love You To the moon back and Grandma I Love You To the moon back and daughter I love You To the moon and back

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I love You To the moon and back
dad
Mom
Grand daughter
brother
Grandson
uncle

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	I love You To the moon and back brother I love You To the moon and back aunt I love You To the moon and back dad I love You To the moon and back Mom
Heart Pendant Mother and Daughter forever Registration No.: VA 1-949-421	• Ashley Jewels • Boardwalk Buy Mother and Daughter forever

First Cause Of Action

(Copyright Infringement)

43. LA Gem hereby realleges and incorporates the allegations in paragraphs 1

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through 42 of this Complaint as if fully set forth herein.

44. Defendants' acts constitute infringement of LA Gem's copyright in the Crescent Pendant, Mom Pendants, and Heart Pendant (collectively, "LA Gem's Pendants"), in violation of the Copyright Act, 17 U.S.C. § 101, *et seq.*

45. LA Gem is informed and believes that Defendants' manufacture, distribution, duplication and/or sale of infringing copies of LA Gem's Pendants was deliberate, willful, malicious, oppressive, and without regard to LA Gem's proprietary rights.

46. Defendants' copyright infringement has caused, and will continue to cause LA Gem to suffer substantial injuries, loss, and damage to its proprietary and exclusive rights to the copyright in LA Gem's Pendants and further, has damaged LA Gem's business reputation and goodwill, diverted its trade, and caused loss of profits, all in an amount not yet determined. In addition, LA Gem is entitled to receive the profits made by Defendants from their wrongful acts pursuant to 17 U.S.C. § 504. Alternatively, LA Gem is entitled to recover statutory damages, on election by LA Gem in an amount of up to $150,000 per copyright registration.

47. Defendants' copyright infringement and the threat of continuing infringement has caused, and will continue to cause, LA Gem repeated and irreparable injury. It would be difficult to ascertain the amount of money damages that would afford LA Gem adequate relief at law for Defendants' acts and continuing acts. LA Gem's remedy at law is not adequate to compensate it for the injuries already inflicted and further threatened by Defendants. Therefore, LA Gem is entitled to preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502, and to an order under 17 U.S.C. § 503 and 28 U.S.C. § 1651(a) that the infringing copies of LA Gem's Pendants, and all molds by which such infringing copies were produced, be seized, impounded, and destroyed.

48. LA Gem is also entitled to recover its attorneys' fees and cost of suit pursuant to 17 U.S.C. § 505.

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Second Cause of Action

(Contributory and/or Vicarious Copyright Infringement)

49. LA Gem hereby realleges and incorporates the allegations in paragraphs 1 through 48 of this Complaint as if fully set forth herein.

50. LA Gem is informed and believes, and thereon alleges, that Defendants, and each of them, knowingly induced, participated in, aided and abetted, and resultantly profited from the illegal reproduction, importation, purchase, distribution, and/or sale of products bearing LA Gem's Pendants as alleged in this Complaint.

51. LA Gem is informed and believes, and thereon alleges, that Defendants, and each of them, are vicariously liable for the copyright infringement alleged in this Complaint because they had the right and the ability to supervise such infringement and because they had a direct financial interest in the infringing conduct.

52. By virtue of Defendants' contributory and/or vicarious copyright infringement, LA Gem has suffered substantial damages to its business in an amount to be established at trial.

53. By virtue of Defendants' contributory and/or vicarious copyright infringement, LA Gem has suffered general and special damages in an amount to be established at trial.

54. By virtue of Defendants' contributory and/or vicarious copyright infringement, Defendants, and each of them, have obtained direct and indirect profits that they would not have realized but for their infringement of LA Gem's Pendants. As such, LA Gem is entitled to disgorgement of Defendants' profits that are directly and indirectly attributable to their acts of infringement in an amount to be established at trial.

55. LA Gem is informed and believes, and thereon alleges, that Defendants, and each of them, have continued to import, manufacture, cause to be manufactured, and/or sell the infringing product with knowledge that such acts violated LA Gem's intellectual property rights. Therefore, Defendants' acts of copyright infringement as alleged above, were and continue to be, willful, intentional, and malicious, subjecting Defendants, and

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each of them, to liability for statutory damages under 17 U.S.C. § 504(c)(2) in the sum of up to one hundred fifty thousand dollars ($150,000) per each act of infringement. Further, Defendants, and each of them, willfully and intentionally misappropriated, palmed-off, and/or infringed LA Gem's Pendants, which renders Defendants, and each of them, liable for statutory damages as described above. Within the time permitted by law, LA Gem will elect between actual or statutory damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LA Gem prays for judgment against Defendants as follows:

A. That the Court enter a judgment against Defendants that Defendants have infringed the rights of LA Gem in LA Gem's federally registered copyrights under 17 U.S.C. § 501.

B. That the Court issue a Preliminary Injunction enjoining and restraining Defendants and their respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendants, from:

i. manufacturing, producing, selling, distributing, destroying, altering, or otherwise disposing of any jewelry that is in the possession of Defendants that is substantially similar to LA Gem's Pendants;

ii. destroying any documents, electronic files, wax models, molds, business records, or any other tangible object pertaining to the copying, reproduction, manufacture, duplication, distribution, or advertisement of any such jewelry; and,

iii. engaging in any other activity constituting an infringement of LA Gem's copyrights of LA Gem's Pendants.

C. That LA Gem be awarded damages for Defendants' copyright infringement either: (i) actual damages in an amount to be determined at trial, together with

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Defendants' profits derived from its unlawful infringement of LA Gem's copyrights; or (ii) statutory damages in an amount provided by law, as set forth in 17 U.S.C. § 504, at LA Gem's election before the entry of final judgment, together with prejudgment and post-judgment interest.

D. That the Court issue a Permanent Injunction enjoining and restraining Defendants and their respective agents, servants, employees, successors and assigns, and all other persons acting in concert with or in conspiracy with or affiliated with Defendants, from copying, reproducing, manufacturing, duplicating, disseminating, distributing, or using LA Gem's Pendants or any other jewelry that infringes LA Gem's copyrights.

E. That the Court award LA Gem its reasonable attorneys' fees pursuant to 17 U.S.C. § 505.

F. That the Court award LA Gem its costs of suit incurred herein.

G. That LA Gem be awarded such other relief as may be appropriate.

Dated: March 29, 2017

Respectfully submitted,

MILORD & ASSOCIATES, P.C.
/s/ Milord A. Keshishian
Milord A. Keshishian
Attorneys for Plaintiff
L.A. GEM & JEWELRY DESIGN, INC.

DEMAND FOR JURY TRIAL

Plaintiff, through its attorneys of record, hereby demands trial by Jury.

Dated: March 29, 2017

MILORD & ASSOCIATES, P.C.

/s/ Milord A. Keshishian
Milord A. Keshishian
Attorneys for Plaintiff
L.A. GEM & JEWELRY DESIGN, INC.

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